United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-7229

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United States Court of Appeals

for the

SECOND CIRCUIT

76-7229

VINCENT TRANTOLO, *Appellant*

vs.

JOSEPH T. GORMLEY, JR., ET AL, *Appellees*

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR APPELLEES

To be argued by: Robert E. Beach, Jr.

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STATEMENT OF ISSUES

The sole issue presented in this appeal is whether the District Court properly dismissed the complaint, which sought to enjoin a single state prosecution, on grounds of *Younger v. Harris,* 401 U.S. 37 (1971).

STATEMENT OF THE CASE

The plaintiff-appellant in this action, Vincent J. Trantolo, filed a complaint in the United States District Court for the District of Connecticut on March 11, 1976. (Appendix 3a).[1] The complaint alleged various events in the pre-trial stage of a criminal proceeding and, as relief, sought to enjoin the defendants, who are prosecuting officials of the State of Connecticut, from proceeding further with the prosecution. Attached to the complaint was a "Motion for Temporary Restraining Order and Preliminary Injunction" (Record Document 6), which motion was heard by the court on March 2, 1976. On the same day, the court denied the motion and dismissed the action; judgment was filed on March 31, 1976. (Record Document 8). The plaintiff-appellant then filed a "Motion to Reconsider" (Record Document 7), which was denied on April 26, 1976.

Because the outcome of this case apparently hinges upon whether the complaint alleges facts on which relief may be granted, an examination of the complaint, assumed for present purposes to be true, is compelled. The complaint first alleges jurisdiction and the nature of the parties. The underlying facts are then alleged: briefly, this action stems from a dispute at the Loomis School in Windsor, Connecticut, in March, 1974. The appellant alleged that he was playing basketball there and to return to the locker room noted suspicious behavior on the part of three young men. (Appendix 5a). He immediately discovered that money was missing from his wallet and, with a companion, chased after the yong men. (Appendix 6a). The young men locked themselves in an automobile; the ap-

[1] The appellees feel constrained to print and to submit the entire complaint in their appendix; they are of the belief that the issue should be resolved in the light of the entire complaint.

pellant, significantly, alleges that he banged on the window and demanded that the young men alight from the car and return the money. (Appendix 6a). At this point, "the glass on the passenger side broke inwardly, scattering glass in the interior of the automobile."; (Appendix 6a); and one of the young men, a Michael Sullivan, "received superficial injuries." (Appendix 6a).

The appellant summoned the Windsor police and went to the hospital. On the following day, money with blood on it was found in a jacket worn by Sullivan; and the appellant and his companion gave sworn statements to the police for the purpose of securing arrests of the young men. (Appendix 6a).

The prosecution of the cases then began; the course of the prosecution, as alleged in the complaint, was somewhat unusual. The appellant approached the appellee Rothenberg, Prosecuting Attorney for the particular area, about the case and Rothenberg allegedly said that the three young men would be arrested. (Appendix 7a). He alleges, however, that nothing happened. (Appendix 7a).

The appellant later contacted the appellee Guy Wolf, III, an Assistant Prosecuting Attorney, who allegedly said that tests would have to be conducted in order to determine whose blood was on the money. The tests, however, were inconclusive. (Appendix 7a). Sometime later, Wolf allegedly referred the case to the appellee Austin J. McGuigan. (Appendix 7a-8a).

The appellant and McGuigan then entered a state of long and rather complicated negotiations. The appellant agreed to take a polygraph test on the question of whether he had "planted" the money on Sullivan and allegedly passed. Sullivan allegedly refused to take the test. (Appendix 8a). McGuigan allegedly told the appellant that he thought that the young

men had taken the money; but arrest warrants still did not issue. (Appendix 8a-9a).

After four months had passed from the time of the underlying incident, the apellant then wrote a letter to the Governor of Connecticut, then the Hon. Thomas J. Meskill. The letter allegedly was forwarded to the Judicial Department and ended up with the appellee Joseph T. Gormley, Jr., the Chief State's Attorney for the State of Connecticut. (Appendix 9a). Two weeks later, arrest warrants were issued for both the appellant and Sullivan; both were arrested. (Appendix 9a). The appellant asserts that at least some of the defendants knew that the sworn statements were false and that he has been unable to determine how Sullivan's case has been resolved. (Appendix 9a-10a).

The appellant further asserts that McGuigan said he did not object to a motion to dismiss pursuant to §499A of the Connecticut Practice Book, but that the defendant Rothenberg "warn(ed) the judge against granting the motion." (Appendix 10a). At the time another motion to dismiss was to be heard, McGuigan added another count to the information and allowed the testimony of two of the young men to be heard, even though he supposedly knew it to be false. (Appendix 10a-11a).

The complaint then mentions the probable defense to the criminal action and states various conclusions. A panoply of constitutional deprivations are alleged. (Appendix 11a). The appellant claims, inter alia, harassment, and retributive behavior, irreparable injury suffered by the appellant, the existence of a conspiracy and the lack of an adequate remedy at law. (Appendix 12a-13a). The requested relief was ultimately an injunction against further prosecution. (Appendix 13a-14a).

By reciting the pertinent allegations, the appellees in no way admit or deny any of them. They simply treat them as true for purposes of determining whether Judge Blumenfeld properly dismissed the complaint.

ARGUMENT

The court below dismissed the action and cited *Younger v. Harris,* 401 U.S. 37 (1971). *Younger,* of course, holds that federal courts should not intervene in state prosecutions except in the most extreme circumstances. A plaintiff must be able to show irreparable injury such that cannot be resolved in a single prosecution; *Younger v. Harris,* supra at 401 U.S. 49-50; and a plaintiff must show bad faith, harassment, or other unusual circumstance. *Younger v. Harris,* supra at 401 U.S. 54.

A bad faith prosecution is generally considered to be one in which there is no hope for a valid conviction; *Kugler v. Helfant,* 421 U.S. 117, 126 n. 6 (1975); *Perez v. Ledesma,* 401 U.S. 82, 85 (1971); and harassment is generally deemed to involve repeated arrests or threats thereof designed to inhibit legitimate activity. See *Younger v. Harris,* supra at 401 U.S. 49; cf. *Dombrowski v. Pfister,* 380 U.S. 479 (1965). Irreparable injury, the *sine qua non* for injunctive relief, must be both great and immediate and the various difficulties in defending a prosecution do not alone establish irreparable injury. *Kugler v. Helfant,* supra at 421 U.S. 124.

What may constitute "other unusual circumstances" is less than absolutely clear; but a comparison with two analogous factual situations demonstrate emphatically that such circumstances do not exist here. In *Kugler v. Helfant,* supra, alleged collusive activity by the judiciary of the State of New Jersey was held not to create a circumstance making vindication of a federal right in state court meaningless. And in *Erdmann v. Stevens,* 458 F2d 1205 (2d Cir. 1972), cert. denied 409 U.S. 889, this court held that disciplinary proceedings against a lawyer who had rather roundly criticized New York's judiciary

could not be enjoined on the ground that they constituted only retribution for the criticism. *Erdmann's* claims had been that he was being punished for having exercised his First Amendment rights and that the proceedings would not be fair. This court held that the conclusory allegations were unsupported by alleged facts and that nothing was alleged to establish irreparable injury that could not be resolved in a single state prosecution. Given *Kugler* and *Erdmann*, it is difficult to imagine in what manner an "other unusual circumstance" has been alleged in this complaint.

So far as bad faith and harassment are concerned, it is clear that neither exists. The complaint alleges that the appellant banged on the window and the shattered glass cut Sullivan. A case does not have to be ironclad in order to be removed from the bad faith category; *Cameron v. Johnson*, 390 U.S. 611, 621 (1968); in this case, the appellant himself has alleged facts on which assault may be shown. Similarly, there is no allegation of anything other than a single prosecution resulting from a single incident. Harassment would appear to be out of the question.

The gravamen of the appellant's claim to this court is that he should at least have been entitled to a hearing at which he could seek to prove his claims of bad faith, harassment, and the like. Those claims, of course, are totally conclusory and, in the absence of reasonably specific factual allegations do not justify a hearing. *Erdmann v. Stevens*, supra at 1210; see *Church v. Hegstrom*, 416 F2d 449, 451 (2d Cir. 1969); *Birnbaum v. Trussell*, 347 F2d 86, 89 (2d Cir. 1965); *Checker Motors, Inc. v. Chrysler Corp.*, 405 F2d 319, 323 (2d Cir. 1969), cert. denied 394 U.S. 999 (1969). In *Kugler v. Helfant*, supra, the Supreme Court noted (n. 5 at 421 U.S. 125) that an evidentiary hearing

is not necessary where, in the context of a dismissal, the facts alleged in the complaint are assumed to be true. In such a case, as here, a hearing is superfluous because even if the plaintiff should prove everything he alleges, he still cannot prevail.

In conclusion, the appellees urge that this court affirm the judgment of the District Court dismissing the action. The appellees maintain that no facts are alleged to establish bad faith, harassment or other circumstances such that the appellant's constitutional rights may not be vindicated in a single state prosecution. Thus there is no allegation of irreparable injury and the *Younger* bar to federal intervention ought to be applicable.

Respectfully submitted,

THE DEFENDANTS

By .....

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